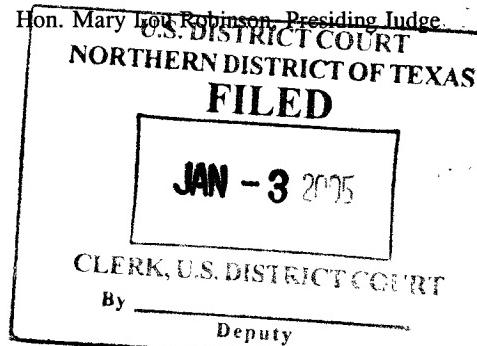


1 Chuck Hester  
 2 James L. Abbott, Jr.  
 3 Hester, McGlasson & Cox

4 1507 Fourth Avenue  
 5 Canyon, Texas 79015  
 6 (806) 655-1016  
 7 (806) 655-3434 (Facsimile)

8 Attorneys for Plaintiff



11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE NORTHERN DISTRICT OF TEXAS  
 13 AMARILLO DIVISION

14 **2 - 05CV - 001 - J**

15 JERRY BAILEY,

16 Plaintiff,

vs.

17 ARMSTRONG COUNTY, TEXAS and,  
 18 J.R. WALKER, Armstrong County Sheriff,

19 Defendants.

**PLAINTIFF'S ORIGINAL COMPLAINT**

20 Case No.: \_\_\_\_\_

21 COMES NOW, JERRY BAILEY, Plaintiff herein, and files this, his Plaintiff's  
 22 Complaint, and for cause of action against Defendants, ARMSTRONG COUNTY, TEXAS,  
 23 and J.R. WALKER, complains and alleges the following:

24       1. **Jurisdiction and Venue.** Plaintiff institutes these proceedings and invokes the  
 25 jurisdiction of this Court under and by virtue of 28 U.S.C. §1333 to obtain the costs of suit,  
 26 including reasonable attorney fees, and damages suffered by Plaintiff and caused by  
 27 Defendant's violation of his rights as guaranteed in the First Amendment to the Constitution of  
 28 the United States of America and by federal law, 42 U.S.C. §1983.

1       2.     The Court also has jurisdiction of this action under 28 U.S.C. §1331, in that the  
2 matter in controversy arises under the First Amendment of the Constitution of the United  
3 States of America. Jurisdiction is further conveyed upon this Court by 29 U.S.C.S. §216(b).  
4 Plaintiff's state claims are brought in accordance with the Court's supplemental jurisdiction.  
5  
6 28 U.S.C.S. §1367.

7       3.     The violation of Plaintiff's rights as alleged herein was committed within the  
8 State of Texas within the Northern District of Texas.

9       4.     **Parties.** Plaintiff, JERRY BAILEY, is a citizen of the United States of America  
10 and was at all times relevant herein a resident of the State of Texas.

12       5.     Defendant, ARMSTRONG COUNTY, TEXAS, is a governmental and may be  
13 served by serving its County Judge, Honorable Hugh Reed at the Armstrong County  
14 Courthouse in Claude, Texas. Defendant, J.R. WALKER, is the duly elected Sheriff of  
15 Armstrong County, Texas and was the duly elected Sheriff of Armstrong County, Texas at all  
16 times relevant herein and is and at all times relevant herein was a resident of Armstrong  
17 County, Texas.

19       6.     At all times relevant herein, Defendant, J.R. WALKER, acted pursuant to the  
20 policies, regulations or decisions officially adopted or promulgated by those in the Armstrong  
21 County Sheriff's Department whose acts may fairly be said to represent official policy or were  
22 pursuant to governmental custom of the Armstrong County Sheriff's Department. Defendant,  
23 J.R. WALKER, is a governmental official with final authority to make decisions regarding  
24 hiring and firing employees of the Potter County Sheriff's Department. As such, his decisions  
25 constitute official policy for purposes of §1983.  
26  
27  
28

1       7. Defendants acted under the color of authority of the State of Texas at  
2 all times relevant herein.

3       8. **Facts.** Plaintiff, JERRY BAILEY, was employed by the Armstrong County  
4 Sheriff's Department (ACSD) from June 25, 2002 to October 29, 2004 as a Law Enforcement  
5 Officer or Peace Officer, and was at all relevant times TCLEOSE certified. During the course  
6 of his tenure with the ACSD, Plaintiff was often required to work in excess of the forty (40)  
7 hour work week defined under the Fair Labor Standards Act (FLSA), 29 U.S.C. §206, *et. seq.*  
8 During this time, Defendants failed and refused to allow Plaintiff to take Compensatory Time<sup>1</sup>  
9 or to pay Plaintiff overtime wages as described and commanded by the FLSA. In about June  
10 of 2004, Plaintiff approached Defendant, J.R. WALKER, with his concerns regarding his due  
11 overtime compensation, to no avail. Plaintiff employed counsel, and on October 25, 2004,  
12 Plaintiff presented his demand that Defendants bring themselves into compliance with the  
13 FLSA. The demand was received by Defendants on October 26, 2004. A copy of the demand  
14 is attached hereto as Exhibit "A" and is incorporated herein by reference for all purposes.  
15

16       9. Rather than bring themselves into compliance with federal law, Defendant, J.R.  
17 WALKER, terminated Plaintiff's employment on October 29, 2004. Defendants contend that  
18 Plaintiff's employment was terminated for "misconduct." Plaintiff contends that he was  
19 terminated three days after his demand for overtime compensation as retaliation for his  
20 demands under the FLSA. Plaintiff's termination was also a violation of the Texas  
21 Whistleblower Act and in violation of Plaintiff's First Amendment rights under the United  
22 States Constitution.  
23  
24

25  
26  
27  
28<sup>1</sup> 29 U.S.C.S. §207(o).

**Cause of Action -- One**  
**Fair Labor Standards Act Violations**

10. Defendants actions are in violation of §207 and §215 of the FLSA. Defendants have failed and refused, and continue to fail and refuse, to properly compensate Plaintiff was overtime work that he performed during the course and in the scope of his employment with the ACSD. Defendants refused to allow Plaintiff Compensatory Time or to pay him overtime for work performed in excess of forty hours per week. When Plaintiff reported this violation of the FLSA, Defendants terminated his employment in violation of §215 of the FLSA. Plaintiff seeks damages for unpaid wages. In addition, Plaintiff seeks an additional amount equal to the unpaid wages as liquidated damages for violation of §207 of the FLSA. In addition, Plaintiff seeks such legal or equitable relief as may be appropriate to effectuate the purposes of §215(a)(3) of the FLSA. In addition, Plaintiff seeks an additional award of reasonable attorney's fees to be paid by Defendants, and costs of this action in accordance with §216 of the FLSA.

## **Cause of Action – Two Texas Whistleblower Act Violations**

11. Defendants actions further constitute a violation of the Texas Whistleblower Act, Texas Gov't. Code Ann. §§554.01, *et. seq.*, in that the sole reason for Defendants' termination of Plaintiff's employment was his report of violation of law. Plaintiff reported this violation to Defendants in that his attorney made a demand that they comply with the requirements of the FLSA. Three days after this report, Defendant, J.R. WALKER, terminated his employment in retaliation for the report of violation.

1       12. Plaintiff would show that he is an employee protected from unlawful action by a  
2 local governmental entity as those terms are defined in §554.001 TEX. GOVT. CODE  
3 (commonly known as the **Texas Whistleblower Act**) and has been subjected to unlawful  
4 retaliation in violation of TEX. GOVT. CODE §554.002. Based upon the conduct of Defendants  
5 as herein alleged, Plaintiff is entitled to damages as provided by §554.003 TEX. GOVT. CODE  
6 including the following:

- 7           a. Actual damages resulting from defamation and damage to Plaintiff's  
8 reputation and standing in the community in the minimum sum of  
9 \$500,000.00.
- 10          b. Statutory damages as provided by §554.003(c)(4) for mental anguish,  
11 loss of enjoyment of life, emotional distress, inconvenience and loss of  
12 future income, in the sum of \$250,000.00. Defendants acted with malice  
13 in bringing about Plaintiff's discharge from employment.
- 14          c. Attorney's fees in the minimum sum of \$200.00 per hour for the  
15 prosecution of this suit through trial and appeal pursuant to  
16 §554.003(a)(4); and,
- 17          d. Court costs incurred by Plaintiff in this action.
- 18          e. Plaintiff is entitled to recover punitive or exemplary damages of at least  
19 \$1,000,000.00 by reason of the fact that the conduct of Defendants was  
20 intentional, malicious and reasonably calculated to inflict, damage, loss  
21 and injury upon the Plaintiff. Such exemplary damages should be  
22 awarded to deter future acts of retaliation against employees who report  
23 illegal activity by agents of governmental entities.
- 24
- 25
- 26
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- 28

13. In addition, Plaintiff is entitled to injunctive relief to prohibit further unlawful acts on the part of Armstrong County agents, employees, and elected officials and reinstatement to his former position with compensation for lost wages during the period following wrongful termination and prior to reinstatement. Plaintiff also seeks reinstatement of all employee fringe benefits lost as a result of the unlawful acts of Defendants and compensation for all benefits lost during the period of suspension of his employment.

**Cause of Action – Three  
First Amendment Violations, §1983**

14. The acts of Defendant, J.R. WALKER, subjected Plaintiff to a violation of his Constitutional rights under the First Amendment to the Constitution of the United States of America, and have caused Plaintiff to suffer damages within the jurisdiction limits of this Court. Defendant, J.R. WALKER, committed such violation in that he terminated Plaintiff's employment for the sole reason that Plaintiff had exercised his First Amendment, Freedom of Speech, rights. At the time that Defendant, J.R. WALKER, terminated Plaintiff's employment with the ACSD, he was acting as the policy maker for Armstrong County, Texas and was exercising official policy. Defendant, J.R. WALKER, is an elected official who represents the final authority in his office, and, in such capacity, his action must necessarily be considered to represent official policy.

15. Plaintiff brings this action under 42 U.S.C. §1983, in that Defendant, J.R. WALKER, while acting under color of law, violated Plaintiff's free speech rights under the First Amendment to the Constitution of the United States of America. The said deprivation of first amendment rights was substantial.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this honorable Court:

- 1      1. Permanently enjoin Defendant, his agents, assistants, successors, employees,  
2      and persons acting in concert or cooperation with them from further violating  
3      the rights, privileges and immunities guaranteed to Plaintiff under the  
4      Constitution of the United States of America;
- 5      2. Grant compensatory damages to Plaintiff;
- 6      3. Grant punitive damages to Plaintiff; and,
- 7      4. Grant Plaintiff his costs of this action, including reasonable attorney fees.

Respectfully submitted this the 3<sup>rd</sup> day of January, 2005.

11      Of Counsel:

12        
13      JAMES L. ABBOTT, JR.  
14      Texas Bar Number 24006725

11      Respectfully submitted,

12      HESTER, McGLASSON & COX  
13      1507 Fourth Avenue  
14      Canyon, Texas 79015  
15      (806) 655-1016  
16      (806) 655-3434 (fax)

17      ATTORNEYS FOR PLAINTIFF

18      In accordance with 29 U.S.C.S. §216, I have reviewed the Plaintiff's Original  
19      Complaint, and I hereby give my consent to be a party plaintiff hereto.

20        
21      Jerry Bailey, Plaintiff

**HESTER, McGLASSON & COX**

ATTORNEYS AT LAW  
 1507 FOURTH AVENUE  
 CANYON, TEXAS 79015  
 (806) 655-1016  
 (806) 655-3434 FAX

CHUCK HESTER  
 DARRELL R. CAREY  
 JAMES L. ABBOTT, JR.\*  
 LANCE E. PURCELL†

ELTON E. COX (1932-2003)  
 GENE McGLASSON, JR. (1920-1991)

Sherri Parkhurst, Legal Assistant  
 Brenda K. Abbott, Legal Assistant

\* Member National Organization of Social Security Claimants' Representatives (NOSSCR)  
 † Licensed in Texas and New Mexico

October 25, 2004

**VIA CERTIFIED MAIL,**  
**RETURN RECEIPT REQUESTED**  
 And One Copy by First Class U.S. Mail

Honorable Hugh Reed  
 Armstrong County Judge  
 P. O. Box 189  
 Claude, Texas 79019-0189

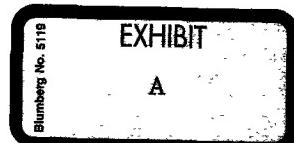
Re: *Jerry Bailey — Fair Labor Standards Act Claim*

***Privileged Settlement Communication — FED. R. CIV. P. 408***

Dear Judge Reed:

This is to advise you and the Armstrong County Commissioners that we represent Jerry Bailey, a Deputy Sheriff of Armstrong County in regard to a claim under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.* It appears that Mr. Bailey was employed by Armstrong County on or about June 25, 2002 and has accrued entitlement to overtime compensation, as determined by the Armstrong County Treasurer, now due in the total sum of \$22,721.74, which includes FICA of \$1,558.38 and retirement of \$792.44. Therefore, the net amount now due and payable to Mr. Bailey is \$20,390.92.

We request that Armstrong County pay the overtime compensation which is now due so that this matter may be resolved and settled in an amiable manner. We have recently been advised that the Armstrong County Sheriff has taken adverse personnel action against Mr. Bailey, which we construe as retaliation for Mr. Bailey's report of the violation of the Fair Labor Standards Act and request for overtime compensation. In the event this matter is settled amiably and without the need for litigation, we are prepared, as a compromise and settlement offer at this time, to waive the retaliation cause of action. However, in the event this offer is not accepted within 30 days from the date of this letter, the offer will automatically become void and of no further force and effect and all claims, including the retaliation claim and the claim for overtime compensation under the Fair Labor Standards Act, will be asserted in the United States District Court for the Northern District of Texas.



COPY

Honorable Hugh Reed  
 Armstrong County Judge  
 October 25, 2004

We are enclosing herewith the supporting documentation in connection with the overtime compensation claim. If you have any questions or if we can provide further information, please feel free to contact us.

Sincerely,

HESTER, McGLOSSON & COX

**ORIGINAL SIGNED BY**  
**CHUCK HESTER**

Chuck Hester

CH/bka  
 Enclosure  
 cc: Jerry Bailey (w/o Encl.)

7004 0750 0004 0567 9873

**SENDER: COMPLETE THIS SECTION**

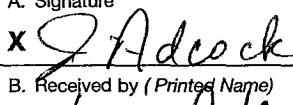
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Honorable Hugh Reed  
 Armstrong County Judge  
 P.O. Box 189  
 Claude TX 79019-0189

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature



Agent  
 Addressee

B. Received by (Printed Name)

June Adcock 10-26-04

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number

(Transfer from service label)

7004 0750 0004 0567 9873

**CIVIL COVER SHEET 2-05CV-001-J**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Jerry Bailey

(b) County of Residence of First Listed Plaintiff Armstrong

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) (806) 655-1016  
 James L. Abbott, Jr. and Chuck Hester  
 Hester, McGlasson & Cox  
 1507 Fourth Ave, Canyon, Texas 79015

**DEFENDANTS**Armstrong County, Texas and  
 J.R. Walker, Armstrong County SheriffCounty of Residence of First Listed Defendant Armstrong

(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
 LAND INVOLVED

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |  |   |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)			<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN**

(Place an "X" in One Box Only)

- |   |   |  |   |  |   |  |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity)  
 29, U.S.C.S. § 207, 215; 42 U.S.C.S. § 1983; Texas Gov't Code Ann. § 554.01

Brief description of cause

FLSA; Civil Rights; Texas Whistleblower Act Claim

**VII. REQUESTED IN COMPLAINT:**

<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ _____	CHECK YES only if demanded in complaint JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
---	-----------------	---

**VIII. RELATED CASE(S) IF ANY**

(See instructions)

JUDGE

DOCKET NUMBER

DATE

1/3/05

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IPP

JUDGE

MAG. JUDGE

Receipt # 40122